

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 13-2715 CA 25

SURVIVOR, by and through Isidro Reyes and  
Ana Reyes, parents and next friends, and  
RICHARD MILSTEIN, as Personal Representative  
of the Estate of VICTIM, a deceased minor child

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF CHILDREN  
AND FAMILIES

Defendant.

\_\_\_\_\_ /

**DEFENDANT, FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES' NOTICE OF FILING**

Defendant, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES  
("DCF"), by and through its undersigned counsel, hereby gives notice of the filing of the  
following:

1. Settlement Agreement and Release, signed by DCF on March 15, 2013, with signature page signed by Richard Milstein on March 15, 2013 and signature pages signed by Isidro and Ana Reyes on March 21, 2013;
2. Senate Bill 74, filed July 31, 2014.
3. September 12, 2014 Letter from House Special Master Tom Thomas.
4. October 16, 2014 email exchange between Olga Beato of Grossman & Roth and Rhonda Morris of DCF;

5. October 27, 2014, email from George Levesque.
6. October 28, 2014, email from George Levesque.
7. Senate Rule 4.81.
8. November 25, 2014, email from George Levesque.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that pursuant to Fla.R.Jud.Admin. 2.516, a true and correct copy of the foregoing was served by electronic mail and/or the Florida ePortal System on the attached Service List on this 23<sup>rd</sup> day of January, 2015.

THE LAW OFFICES OF  
ANTHONY & ASSOCIATES, P.A.  
Attorneys for Defendant, DCF  
250 Catalonia Avenue, Suite 505  
Coral Gables, Florida 33146  
Tel: (305) 444-8927  
Fax: (305) 445-9908

By: /s Bradley A. Silverman  
BRADLEY A. SILVERMAN  
[bradley.silverman@ajalaw.com](mailto:bradley.silverman@ajalaw.com)  
Fla. Bar No.: 0105333

**SERVICE LIST**

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GROSSMAN ROTH, P.A.

2525 Ponce de Leon Blvd., Suite 1150

Coral Gables, FL 33134

Phone: 305.442.8666

Fax: 305.285.1668

*Counsel for Plaintiffs*

**Item #1**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into on the date hereinafter set forth, by and between VICTOR REYES, f/k/a VICTOR BARAHONA, by and through Isidro Reyes and Ana Reyes, his parents and next friends, and RICHARD MILSTEIN, as Personal Representative of the Estate of Nubia Barahona, a deceased minor child (Collectively "The Settling Plaintiffs"), as the First Parties, and THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ("DCF"), as the Second Party.

### WITNESSETH:

**WHEREAS**, The Settling Plaintiffs commenced two lawsuits identified as *SURVIVOR*, by and through Isidro Reyes and Ana Reyes, parents and next friends, and RICHARD MILSTEIN, as Personal Representative of the Estate of VICTIM, a deceased minor child vs. *OUR KIDS OF MIAMI-DADE/MONROE, INC., THE CENTER FOR FAMILY AND CHILD ENRICHMENT, INC.; JEAN LACROIX, individually, EUNICE GUILLOT, individually; LACHERYL HARRIS f/k/a LACHERYL ALVARADO, individually; ALICIA PROFF, individually, LATEEF IBRAHIM, individually, ANGELA WILLIAMS, individually, ROBERTA THEOC, individually, YVES FRANCOIS, individually, VANESSA ARCHER, Ph.D.; ARCHER PSYCHOLOGICAL SERVICES, INC., n/k/a ARCHER PSYCHOLOGICAL SERVICES, P.A., and STATE OF FLORIDA DEPARTMENT OF CHILDREN & FAMILY SERVICE*, U.S. District Court Case No.

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)

Init  (DCF)

1:11-cv-24611-PAS (hereinafter "The Federal Action) and *SURVIVOR, by and through Isidro Reyes and Ana Reyes, parents and next friends, and RICHARD MILSTEIN, as Personal Representative of the Estate of VICTIM, a deceased minor child vs. Florida Department of Children and Families*, Miami-Dade Circuit Court Case No. 13-2715 CA 25 (hereinafter "The State Court Action").

**WHEREAS**, each party has determined that it is in their respective best interests to resolve this case based on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the foregoing premises, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Payment. The DCF will pay the Settling Plaintiffs the sum of One Million Two Hundred Fifty Thousand (\$1,250,000.00) Dollars (the "Settlement Funds"), which will be paid by check made payable to the "Grossman Roth, P.A. Trust Account" by no later than thirty (30) days from the date of the execution of this Agreement.

2. Claims Bill: The parties to this agreement agree that the Settling Plaintiffs and/or their authorized representatives will apply to the Florida Legislature for the passage of a Claims Bill for the benefit of the Settling Plaintiffs, as provided for in Chapter 11 Fla. Stat. and the applicable rules of the Florida House and Florida Senate, for an amount not to exceed Three Million Seven Hundred Fifty Thousand (\$3,750,000.00) Dollars. The DCF agrees that it will not oppose any such application and when requested by the Plaintiffs will provide a Letter of Support for said application. Nothing in this

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)

agreement shall be deemed to obligate the DCF to take any action with regard to any application or a Claims Bill other than providing the aforementioned Letter of Support. The Settling Plaintiffs reserve the right to structure any portion of any Claims Bill funds. All necessary documentation, including qualified assignments, and a Structured Settlement Addendum, will be provided at the Plaintiff's sole expense.

3. Additional Agreements: The DCF further agrees, as part of the settlement of The Federal Action and The State Court Action, to the following:

a. The DCF agrees to arrange a meeting, at a mutually convenient date and time, between representatives of the Settling Plaintiffs and a representative of the DCF with the knowledge necessary to advise the Settling Plaintiffs' representative(s) of the current status of any reforms or changes to the DCF's policies, procedures or governing statutes relating to dependency and/or foster care. The DCF agrees that, at the discretion of the Settling Plaintiffs, the Settling Plaintiffs may be accompanied at said meeting by David Lawrence, Jr., Roberto Martinez, Esq., and/or Dr. James Sewell, the authors of "The Nubia Report".

b. The DCF agrees to work cooperatively with the Settling Plaintiffs to reach a settlement with Vanessa Archer which includes an agreement by her to never again accept any Court or Agency appointments relating to the foster care or dependency system, or the children in it.

4. Victor Reyes, f/k/a Victor Barahona's Release: Victor Reyes, f/k/a Victor Barahona, by and through Isidro Reyes and Ana Reyes, his parents and next friends, for the consideration recited in Paragraphs 1, 2 and 3, herein, does hereby forever discharge and fully release the Florida Department of Children and Families, the Florida Department of Financial Services, and all of their principals, subsidiaries, servants, agents, employees, heirs, legal representatives, political subdivisions, successors and

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)

assigns, including but not limited to Jean Lacroix, Eunice Guillot, Lacheryl Harris f/k/a Lacheryl Alvarado and Alicia Proff, and each of them respectively ("the Released Parties"), from any and all liability now accrued or hereafter to accrue on account of any and all claims, demands and causes of action which Victor Reyes, f/k/a Victor Barahona now has or may hereafter have against the Released Parties, and by virtue of these presents, does hereby fully release and forever discharge each of them from any and all actions, causes of action, claims, demands, past, present and future damages and injuries including death, costs, expenses, attorney's fees, compensation, and all consequential damages on account of or in any way growing out of any and all known and unknown claims arising out of or in connection with those certain accidents or events which events or accidents are more fully alleged in The Federal Action and The State Court Action, and which such accidents, casualties or events are alleged to have caused injuries or damages to Victor Reyes f/k/a Victor Barahona.

5. The Estate of Nubia Barahona Release: Richard Milstein, as Personal Representative of the Estate of Nubia Barahona, for the consideration recited in Paragraphs 1, 2 and 3, herein, does hereby forever discharge and fully release the Florida Department of Children and Families, the Florida Department of Financial Services, and all of their principals, subsidiaries, servants, agents, employees, heirs, legal representatives, political subdivisions, successors and assigns, including, but not limited to Jean Lacroix, Eunice Guillot, Lacheryl Harris f/k/a Lacheryl Alvarado and Alicia

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)



Proff, and each of them respectively ("the Released Parties"), from any and all liability now accrued or hereafter to accrue on account of any and all claims, demands and causes of action which The Estate of Nubia Barahona now has or may hereafter have against the Released Parties, and by virtue of these presents, does hereby fully release and forever discharge each of them from any and all actions, causes of action, claims, demands, past, present and future damages and injuries including death, costs, expenses, attorney's fees, compensation, and all consequential damages on account of or in any way growing out of any and all known and unknown claims arising out of or in connection with those certain accidents or events which events or accidents are more fully alleged in The Federal Action and The State Court Action, and which such accidents, casualties or events are alleged to have caused the death of Nubia Barahona.

6. Additional Covenants: Each person signing this Agreement on behalf of any of the Settling Plaintiffs, agrees and warrants as follows:

- a. That the alleged injury, disease and/or illness sustained by Victor Reyes, f/k/a Victor Barahona, and/or the survivors of the decedent, Nubia Barahona, as the alleged proximate result of the aforesaid happening may be permanent and progressive, and that recovery therefrom is uncertain and indefinite, and in making this release, I rely wholly upon my own judgment, belief and knowledge of the nature, extent and duration of said injuries, illness and disease, and all damages arising therefrom.
- b. That I have not been influenced in any manner or to any extent in making this Release by any representations or statements regarding said injuries/illnesses and/or disease, or regarding any other matters, by the persons, parties or estates who are hereby released, or by any person or persons representing them.

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

- c. That I do voluntarily accept the aforesaid sum for the purpose of making a full and final compromise, adjustment and settlement of all my claims and all claims of any survivors of the decedent, against the parties hereby released, past, present and future, and including any and all claims upon my death, and upon the death of any of the survivors of the decedent, and upon the death of any of the undersigned beneficiaries, spouse, dependents, heirs, children, estate and legal representatives, and all other persons.
- d. I hereby expressly state that the above consideration is in full payment for this Release, and there is no understanding or agreement of any kind for any further or future consideration whatsoever, either implied, expected, or to come to me or any of the survivors of the decedent, in money, employment, services, or otherwise.
- e. I hereby declare that I am eighteen years of age or over and that I am suffering from no legal disabilities whatsoever; and that I am suffering from no mental or physical disability which would disable me from executing this release.
- f. It is expressly understood, notwithstanding any language to the contrary, that this release is not intended to impair or infringe on the right of Plaintiffs to continue to receive any and all Social Security, Medicare, Medicaid, life, health, sickness, medical or disability benefits to which they are entitled under any existing plan through any employer, insurer, union, federal or state entity or program or any other provider of similar benefits, because this release does not purport to cover such benefits and this release does not purport to release any such provider of such benefits, but does expressly release the Released Parties from any and all obligations and liens relating to the subject lawsuit.

7. Authority to Execute: Subject to the approval of the court, as set forth below, each party or person signing this agreement represents and warrants that they have the actual and express authority to settle, compromise and/or resolve this matter, in

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)

accordance with the terms of this Agreement, and in the case of the Personal Representative of the Estate of Nubia Barahona, that he has the actual and express authority to settle, compromise and or resolve this matter, in accordance with the terms of this Agreement.

8. Liens and Subrogated Interests: The Settling Plaintiffs agree to be fully and solely responsible for payment of all known and unknown expenses, medical liens and subrogation interests of any kind resulting from the matters at issue in this proceeding, and to indemnify and hold harmless The Released Parties against any and all damages, actions, suits or demands of whatsoever kind made by or on behalf of any person or entity as a result of these legal proceedings, settlement and proceeds from settlement, including but not limited to liens of whatsoever kind, cross claims and third party claims, independent of the merit of such claims.

9. Approval of Settlement and Dismissal of Claims. The parties acknowledge and agree that the settlement, as hereinabove described, is subject to and conditioned on review and approval by the Court. The parties agree that the Settling Plaintiffs will apply to the Miami-Dade Circuit Court Judge having jurisdiction over The State Court Action for approval of the settlement. The Plaintiffs will be solely responsible for obtaining Court approval of the settlement. The DCF agrees to cooperate in the approval process. No later than three (3) days following the receipt of the cash proceeds of the settlement, counsel for The Settling Plaintiffs will cause to be filed in The Federal Action a Notice of

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

Init 6 (DCF)

Voluntary Dismissal, With Prejudice, of all of the Settling Plaintiff's claims against the DCF, Jean Lacroix, Eunice Guillot, Lacheryl Harris f/k/a Lacheryl Alvarado and Alicia Proff. The Settling Plaintiffs may advise the Court in the Federal Action of the fact of settlement, and that because of the DCF's pending motion asserting its Eleventh Amendment Immunity, the settlement will be submitted to the State Court for review and approval.

10. Attorney's Fees: It is agreed that each party shall bear and be responsible for its own attorney's fees and costs incurred in this action.

11. Careful Review and Understanding of Agreement. The parties to this Agreement mutually represent that each has carefully read this Agreement and understands its terms and conditions without reservation. The Parties acknowledge that each has had ample opportunity to consult with legal counsel of their choice regarding this Agreement, has not relied on any representations or statement of the other party or its counsel with respect to the subject matter of this agreement, and understands that they are relinquishing and releasing in their entirety the claims they may have.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their principals, subsidiaries, servants, agents, employees, heirs, legal representatives, political subdivisions, successors and assigns.

13. Integration Clause. This Agreement comprises all of the terms, conditions, agreements, and representations of the Parties respecting the settlement and dismissal of

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)

Init  (DCF)

The Federal Action and The State Court Action. This Agreement supersedes all prior agreements, arrangements, and understandings, if any, relating to the subject matter hereof. All representations and promises made by any party to another, whether in writing or orally, concerning the settlement and dismissal of The Federal Action and The State Court Action are understood by the Parties to be merged into this Agreement.

14. No Admission. It is fully understood by the Parties that this Agreement constitutes a settlement of disputed claims in order avoid further trouble, litigation, and expense, and that nothing herein shall constitute or imply an admission of liability of any kind or character by The Released Parties, which such liability is expressly denied.

15. Interpretation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This Agreement has been negotiated by and between the Parties respective counsel, and shall not be construed against the "drafter" of the Agreement.

16. Modification of Agreement. This Agreement may be amended, revoked, changed, or modified only upon a written agreement executed by all Parties. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the party against whom such waiver is charged.

17. Headings. The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

Init \_\_\_\_\_ (I.R.)

Init \_\_\_\_\_ (A.R.)

Init \_\_\_\_\_ (R.M.)


Init  (DCF)

18. Signatures in Counterparts. This Agreement can be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all Parties had the same signature page. A facsimile copy or Adobe PDF of any party's signature shall be deemed as legally binding as the original signatures.

19. Severability. If any portion or portions of this Agreement may be held by a court of competent jurisdiction to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions has not been included herein.

20. Choice of Law and Forum. The Parties agree that this Agreement, and any disputes arising out of it, shall be governed by the laws of the State of Florida. The Parties further agree that the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida shall have exclusive jurisdiction over any dispute over the interpretation or enforcement of this Settlement Agreement, or for its breach, and that nothing in this agreement shall be construed as a waiver of the DCF's Eleventh Amendment Immunity from suit in Federal Court.

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

Init  (DCF)

SIGNED, SEALED AND DELIVERED  
in the presence of:

ISIDRO REYES, as Parent and Next  
Friend of Victory Reyes, f/k/a Victor  
Barahona

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )  
 SS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_ on this \_\_\_\_\_ day of March, 2013.

(Printed Name of Notary)

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents at \_\_\_\_\_ on this \_\_\_\_\_ day of March, 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
ANA REYES, as Parent and Next Friend  
of Victory Reyes, f/k/a Victor  
Barahona

\_\_\_\_\_  
Witness

STATE OF \_\_\_\_\_ )  
ss:  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, in the state and county aforesaid, Ana Reyes, to me personally known or who produced the following identification: \_\_\_\_\_ and who executed the foregoing Settlement Agreement and General Release, and who acknowledged to and before me that she has read and fully understand its contents, or that its contents have been read and explained to her, that she has thereby released all of her claims, and that she duly executed the same in my presence as her free act and deed, and for the sole consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_ on this \_\_\_\_\_ day of March, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Printed Name of Notary)

My Commission Expires: \_\_\_\_\_

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)



IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents at Miami, Miami-Dade County, Florida on this \_\_\_\_ day of March, 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
RICHARD MILSTEIN, as Personal  
Representative of the Estate of Nubia  
Barahona

\_\_\_\_\_  
Witness

STATE OF FLORIDA                    )  
  ss:  
COUNTY OF MIAMI-DADE        )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, in the state and county aforesaid, **Richard Milstein**, to me personally known or who produced the following identification: \_\_\_\_\_ and who executed the foregoing Settlement Agreement and General Release, and who acknowledged to and before me that he has read and fully understand its contents, or that its contents have been read and explained to him, that he has thereby released all of his claims, and that he duly executed the same in my presence as his free act and deed, and for the sole consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_ on this \_\_\_\_\_ day of March, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Printed Name of Notary)

My Commission Expires: \_\_\_\_\_

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents at Miami, Miami-Dade County, Florida on this 15<sup>th</sup> day of March, 2013.

THE FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES

BY: \_\_\_\_\_

Javier Ley Soto, Chief Regional  
Counsel, on behalf of The Florida  
Department of Children and Families

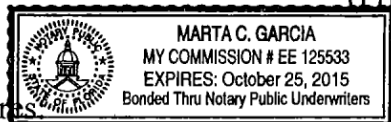
STATE OF FLORIDA                    )  
  ss:  
COUNTY OF MIAMI-DADE        )

BEFORE ME, the undersigned Notary Public, in and for the State of Florida, on this day personally appeared Javier Ley Soto, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Miami, Miami-Dade County, Florida on this 15<sup>th</sup> day of March, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

Marta C. Garcia  
(Printed Name of Notary)



My Commission Expires \_\_\_\_\_

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init \_\_\_\_\_ (R.M.)

Init [Signature] (DCF)

IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents at Miami, Miami-Dade County, Florida on this 15 day of March, 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Richard Milstein  
Witness Richard Metendez

Mary A. Sully  
Witness MARY A. SULLY

Richard Milstein  
RICHARD MILSTEIN, as Personal  
Representative of the Estate of Nubia  
Barahona

STATE OF FLORIDA )  
SS:  
COUNTY OF MIAMI-DADE )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, in the state and county aforesaid, Richard Milstein, to me personally known or who produced the following identification: N/A. and who executed the foregoing Settlement Agreement and General Release, and who acknowledged to and before me that he has read and fully understand its contents, or that its contents have been read and explained to him, that he has thereby released all of his claims, and that he duly executed the same in my presence as his free act and deed, and for the sole consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at MIAMI-DADE on this 15 day of March, 2013.



Marlene Bregio  
NOTARY PUBLIC

MARLENE BREGIO  
(Printed Name of Notary)

My Commission Expires: 9/29/2015

Init \_\_\_\_\_ (I.R.)  
Init \_\_\_\_\_ (A.R.)  
Init Q (R.M.)

IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents at Houston, TX on this 21<sup>st</sup> day of March, 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Jose L Bustillo  
Witness

[Signature]  
Witness

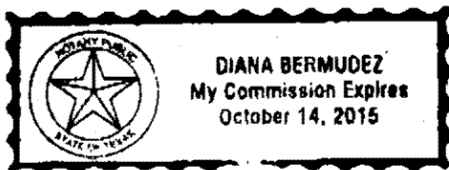
[Signature]

ISIDRO REYES, as Parent and Next  
Friend of Victory Reyes, f/k/a Victor  
Barahona

STATE OF Texas )  
SS:  
COUNTY OF Harris )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, in the state and county aforesaid, Isidro Reyes, to me personally known or who produced the following identification: Texas Drivers License 06253728 and who executed the foregoing Settlement Agreement and General Release, and who acknowledged to and before me that he has read and fully understand its contents, or that its contents have been read and explained to him, that he has thereby released all of his claims, and that he duly executed the same in my presence as his free act and deed, and for the sole consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Houston, TX on this 21<sup>st</sup> day of March, 2013.



[Signature]  
NOTARY PUBLIC

Diana Bermudez  
(Printed Name of Notary)

My Commission Expires: 10/14/2015

Init IR (I.R.)  
Init AR (A.R.)  
Init \_\_\_\_\_ (R.M.)

IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered  
these presents at Houston, TX on this 21<sup>st</sup> day of March, 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

José L Bustillo  
Witness

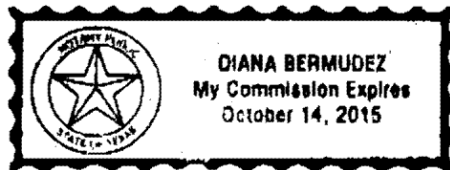
[Signature]  
Witness

[Signature]  
ANA REYES, as Parent and Next Friend  
of Victory Reyes, f/k/a Victor  
Barahona

STATE OF Texas )  
SS:  
COUNTY OF Harris )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, in the state and county aforesaid, Ana Reyes, to me personally known or who produced the following identification: Texas Drivers License 13981569 and who executed the foregoing Settlement Agreement and General Release, and who acknowledged to and before me that she has read and fully understand its contents, or that its contents have been read and explained to her, that she has thereby released all of her claims, and that she duly executed the same in my presence as her free act and deed, and for the sole consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Houston, TX on this 21<sup>st</sup> day of March, 2013.



[Signature]  
NOTARY PUBLIC  
Diana Bermudez  
(Printed Name of Notary)

My Commission Expires: 10/14/2015

Init IR (I.R.)  
Init AR (A.R.)  
Init \_\_\_\_\_ (R.M.)

**Item #2**

By Senator Flores

37-00062-15

201574\_\_

1                   A bill to be entitled  
2       An act for the relief of "Survivor" and the Estate of  
3       "Victim"; providing an appropriation to compensate  
4       Survivor and the Estate of Victim for injuries and  
5       damages sustained as result of the negligence of the  
6       Department of Children and Families, formerly known as  
7       the Department of Children and Family Services;  
8       providing a limitation on the payment of fees and  
9       costs; providing an effective date.

10  
11       WHEREAS, on May 30, 2000, 4 days after their birth, a baby  
12       boy, hereinafter referred to as "Survivor" and his sister,  
13       hereinafter referred to as "Victim," first came to the attention  
14       of the Department of Children and Families, formerly known as  
15       the Department of Children and Family Services, due to the fact  
16       that the children were to be sent to separate foster homes, and

17       WHEREAS, Survivor was reunited with his biological mother  
18       and father on July 26, 2000, and Victim was later reunited with  
19       her biological family on January 8, 2001, and

20       WHEREAS, on August 4, 2003, the court terminated the  
21       parental rights of Survivor's and Victim's biological mother,  
22       and

23       WHEREAS, on March 26, 2004, Survivor's and Victim's  
24       biological father was arrested, which resulted in both Survivor  
25       and Victim being placed in the custody of the state and moved  
26       into the foster home of Jorge and Carmen Barahona, and

27       WHEREAS, within 4 days of the placement of Survivor and  
28       Victim in foster care, contact was made with paternal relatives  
29       in Texas, Mr. and Mrs. Reyes, to explore their potential role as

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caregivers, and

WHEREAS, on March 30, 2004, Mr. and Mrs. Reyes informed the Department of Children and Families that they were interested in caring for Survivor and Victim, and

WHEREAS, pursuant to s. 39.521, Florida Statutes, placement with adult relatives takes priority over out-of-home licensed foster care placement, and Survivor and Victim should have been placed in the Reyes's home as soon as due diligence rendered this possible, and

WHEREAS, pursuant to s. 39.001, Florida Statutes, Department of Children and Families case workers are required to achieve permanency within 1 year, either through reunification with a child's natural parents or adoption, and

WHEREAS, due to significant delays in the placement process, the Reyes' were not permitted to adopt Survivor and Victim, who were ultimately adopted by the Barahonas on May 29, 2009, and

WHEREAS, prior to the adoption of Survivor and Victim by the Barahonas, significant events occurred which the Department of Children and Families knew or should have known were indicative of the perpetration of abuse of Survivor and Victim, and

WHEREAS, in at least one instance, allegations of medical neglect were reported and, pursuant to Department of Children and Families Operating Procedure 175-28, the allegations should have been verified and Survivor and Victim should have been immediately removed from the Barahona home, and

WHEREAS, in January 2005, it was reported that Jorge Barahona had "tickled the private parts" of Victim, which the



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child protective investigator dismissed as being of "little concern," and

WHEREAS, on March 20, 2007, Survivor's and Victim's school principal called in an abuse report to the Department of Children and Families which alleged that, for 5 months, Victim had been going to school at least two to three times per week with serious body odor, smelling rotten, and appearing unkempt; that Victim's uniforms were not clean and her shoes were dirty; that on one occasion Victim had spilled applesauce in her hair at school and returned the following day with the applesauce still in her hair; that Victim was always hungry and eating a lot at school, hoarding food in her backpack from breakfast and lunch, and there was a concern that she was not eating at home; that Victim was afraid to talk; that Survivor also went to school appearing unkempt; and that both Survivor and Victim were having trouble staying awake during classes, and

WHEREAS, on March 29, 2007, the Department of Children and Families learned that Survivor and Victim had been absent from school approximately 20 days, taken out of school early about a dozen times, and were expected to be retained in the first grade, and

WHEREAS, on May 29, 2009, Victim and Survivor were adopted by the Barahonas, despite numerous incidents that should have led to an active investigation and discovery of abuse, and

WHEREAS, in February 2011, the Department of Children and Families Abuse Hotline received another report concerning Survivor and Victim, this time alleging that Survivor and Victim were being severely abused and imprisoned from the world, and

WHEREAS, the Department of Children and Families had the

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88 duty and the responsibility to remove Survivor and Victim from a  
89 placement in which there was a substantial risk of harm, and  
90 over the course of 6 years there were multiple instances of  
91 abuse which the department either knew or should have known were  
92 occurring, and

93 WHEREAS, on February 14, 2011, the six years of abuse by  
94 the Barahonas resulted in the death of Victim, who was found  
95 dead in a truck parked off I-95 in Palm Beach County, and the  
96 near-death of Survivor, who was found in critical condition, and

97 WHEREAS, after the death of Victim and the discovery of the  
98 severe abuse to Survivor and Victim, the Secretary of the  
99 Department of Children and Families, David E. Wilkins, conducted  
100 an investigation that culminated on March 14, 2011, with the  
101 issuance of a report of findings and recommendations, and

102 WHEREAS, in the executive summary of the report,  
103 investigators reported that there were significant gaps and  
104 failures in common sense, critical thinking, ownership, follow-  
105 through, and timely and accurate information sharing, all of  
106 which defined the care of Survivor and Victim from the inception  
107 of their relationship with the state child welfare system, and

108 WHEREAS, the investigators determined that the systematic  
109 failure included both investigative and case management  
110 processes, as well as the pre- and post-adoption processes, and

111 WHEREAS, the investigations that took place following  
112 Victim's death, and the critical condition of Survivor, revealed  
113 numerous incidents of abuse, including, but not limited to,  
114 punching, kicking, choking, beatings, denial of basic and  
115 necessary medical care, forcing the children to eat cockroaches  
116 and food that contained feces, sexual abuse, sticking cotton

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swabs with human feces in the children's ears, suffocating one child with a plastic bag while the other child watched, smearing feces over the children's faces and placing feces on the children's hands for extended periods of time, and binding the children with duct tape and placing them naked in a bathtub together for days on end, and

WHEREAS, after the death of Victim and the discovery of Survivor, criminal charges were filed against the Barahonas, and

WHEREAS, tort claims were filed on behalf of Victim and Survivor in the United States District Court for the Southern District of Florida, Case No. 1:11-civ-24611-PAS, and a complaint was also filed in the Circuit Court for the Eleventh Judicial Circuit of Miami-Dade County, Case No. 13-2715 CA 25, and

WHEREAS, the personal representative of the Estate of Victim and the newly adoptive parents of Survivor have agreed to amicably settle this matter and have entered into a settlement agreement in which the Department of Children and Families has agreed to pay \$5 million to Survivor and the Estate of Victim, and

WHEREAS, as a result of the allegations of both negligence and the violation of civil rights, and pursuant to s. 768.28, Florida Statutes, the Department of Children and Families has paid \$1.25 million to Survivor and the Estate of Victim, and

WHEREAS, the balance of the settlement agreement is to be paid through the passage of this claim bill in the amount of \$3.75 million, and

WHEREAS, the Department of Children and Families fully supports the passage of this claim bill, NOW, THEREFORE,

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Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of \$3.75 million is appropriated from the General Revenue Fund to the Department of Children and Families for the relief of Survivor for the personal injuries he sustained and to the Estate of Victim for damages relating to the death of Victim.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the adoptive parents of Survivor, as legal guardians of Survivor, and to Richard Milstein, as personal representative of the Estate of Victim, in the sum of \$3.75 million upon funds of the Department of Children and Families in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Children and Families pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the personal injuries of Survivor and the death of Victim. The total amount paid for attorney fees and lobbying fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

**Item #3**

# The Florida House of Representatives

September 12, 2014

*Attorney for Claimant*

Neal Roth, Esquire  
Grossman & Roth, P.A.  
2525 Ponce de Leon Blvd., Suite 1150  
Miami, Florida 33134-6040

*Attorney for Respondent*

Rebecca Kapusta, Interim General Counsel  
Department of Children and Families  
9393 North Florida Avenue  
Tampa, Florida 3612-7907

**RE: Senate Bill 74 – Relief of “Survivor” and the Estate of “Victim” by the Department of Children and Families**

Dear Counsel:

I have been appointed by the Speaker of the House of Representatives to serve as the Special Master for the above-named claim pursuant to House Rule 5.6(a). A House Bill has yet to be filed in this matter for the 2015 Regular Legislative Session, but I will proceed assuming such a bill may be filed at a later date. It is my intention to conduct a Special Master Hearing on this matter in conjunction with the Senate Special Master. While our hearings will be conducted together, any resulting reports will be made separately and will include separate findings and recommendations, which may or may not be similar. To this end, be sure to copy both Special Masters with all documents and any correspondence.

Counsel is expected to cooperate on all discovery and scheduling matters in order to facilitate the expeditious and orderly consideration of this matter. Specifically, counsel shall:

1. File a CD with pdf, Word, or Excel files no later than October 17, 2014. The CD shall include:

a. A brief (1-4 page) summary of the case, a summary of each party's position at trial, key administrative or court documents (e.g., last amended complaint, answer, non-discovery orders, final judgment, jury verdict form, post-judgment motions and orders, stipulations, settlement agreements, satisfactions, releases, any appellate decision), incident and accident reports; key exhibits (e.g., relevant portions of the medical records, government agency investigative reports or summaries, photos, diagrams, maps, video surveillances, etc.), excerpts or summaries of key witnesses' testimony; and a concise statement of any insurance coverage.

b. A closing statement from the Claimant's attorney showing all expenses and costs associated with this claim, a statement from the Respondent of its position on the claim bill, a

statement from the Respondent's attorney regarding the source of payment for the claim; and a copy of the proof of publication (required only for local claim bills).

The parties shall collaborate on the production of the CD to avoid the filing of duplicate copies of the requested materials. The filing of separate, non-duplicative CDs by the parties is acceptable.

Prior to the final hearing, the Claimant's attorney must file a sworn affidavit attesting to the agreement concerning attorney's fees and lobbyist's fees related to this bill, as well as an itemized accounting of costs for the attorney and lobbyist.

2. Participate in a pre-hearing conference call.

a. A telephonic pre-hearing conference will be held to schedule the final hearing; outline procedures and rules for the hearing; clarify the facts; develop stipulations; identify and narrow the issues; and determine any requests for supplemental information or documentation.

b. Counsel shall promptly identify several alternative dates and times that they are available for a telephonic prehearing conference (one-hour maximum) during the week of September 29 - October 3, 2014. **Counsel shall contact my Administrative Assistant to schedule the pre-hearing conference on my calendar.** My assistant will coordinate with the Senate Special Master.

c. At the pre-hearing conference, counsel shall be prepared to discuss their availability and set a date for the final hearing sometime in October or November 2014.

3. Present a focused case at the final hearing

a. The parties are expected to focus their representations at the final hearing on the central issues regarding the claim. The parties should also be prepared to present information relevant to the current status of the claimant.

b. The review of this claim is de novo. Thus, even if the claim is uncontested, the Claimant still has the burden to present evidence in support of the claim.

As you prepare for the hearing, you should be aware of the following things:

- A claim bill is a discretionary remedy of the Legislature, and it is a remedy of last resort, passage of which is considered an act of legislative grace.
- The job of the Special Master is to make specific and objective findings of fact and recommendations on liability and damages, and, should the bill be set for a legislative committee hearing, produce a final report that will travel with the bill as it moves through the 2015 legislative session.
- A House Bill will need to be filed in accordance with rules adopted by the House of Representatives.

September 12, 2014

Page 3

- The Legislature is not bound by jury verdicts or settlement agreements, though evidence of either may be given great weight.
- I will ask at the hearing whether there is anything about the claimant or the claim that would make the Legislature hesitant to pay the claim.

4. Filing and contact information.

a. Senate Rule 4.81(7) requires “All materials provided by litigants and others in connection with claim bills shall be submitted in a digital form prescribed by the Secretary.” As such, send materials on a CD with pdf, Word, or Excel files. All filings and correspondence shall be sent to both:

Tom Thomas, Special Master  
412 House Office Building  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

Tom Cibula, Staff Director  
Senate Committee on Judiciary  
515 Knott Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

b. Correspondence may also be sent by e-mail to my Administrative Assistant, Missy Jones, at [Missy.Jones@myfloridahouse.gov](mailto:Missy.Jones@myfloridahouse.gov) and to Mr. Cibula’s Administrative Assistant, Shirley Proctor, at [PROCTOR.SHIRLEY@flsenate.gov](mailto:PROCTOR.SHIRLEY@flsenate.gov).

c. Ex-parte communications with the Special Master are prohibited. Questions about procedural or scheduling matters should be directed to my assistant, Missy Jones, who can be reached at (850) 717-4850 or by email.

d. Copies of any document must be filed both with me and the Senate Special Master.

Thank you for your prompt attention to this matter.

Sincerely,

Tom Thomas, Special Master  
Florida House of Representatives

cc: Tom Cibula, Staff Director, Senate Judiciary Committee  
Rhonda Morris, Assistant General Counsel



## **Item #4**

## Morris, Rhonda

---

**From:** Olga M. Beato <OMB@grossmanroth.com>  
**Sent:** Thursday, October 16, 2014 9:45 AM  
**To:** Morris, Rhonda  
**Cc:** Kapusta, Rebecca  
**Subject:** RE: Senate Bill 74 – Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

You're right. We do need to add the Complaints in both of those cases, the Motion to Dismiss and our response. I do not have the responsive pleadings in the J.B. matter. Do you happen to have them handy? If not, I'm sure I can find them online or by reaching out to Plaintiff's counsel.

-----Original Message-----

**From:** Rhonda Morris [mailto:[Rhonda\\_Morris@dcf.state.fl.us](mailto:Rhonda_Morris@dcf.state.fl.us)]  
**Sent:** Thursday, October 16, 2014 9:23 AM  
**To:** Olga M. Beato  
**Cc:** Rebecca Kapusta  
**Subject:** Re: Senate Bill 74 – Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

Morning. Thank you for the index. I did not notice any references to documents pertaining to the pending litigation of J.B. and G.K., that was requested by the Special Masters. Will you be adding those, with any responsive documents filed in those matters?

Thank you,  
Rhonda Morris  
Department of Children & Families  
Assistant General Counsel  
Risk Management  
Office: 850-717-4469  
E-mail: [Rhonda\\_Morris@dcf.state.fl.us](mailto:Rhonda_Morris@dcf.state.fl.us)

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"Olga M. Beato"  
<OMB@grossmanroth.com> To  
Rebecca [Kapusta/SR/DCF@DCF](mailto:Kapusta/SR/DCF@DCF), Rhonda  
10/15/2014 05:49 [Morris/D20/DCF@DCF](mailto:Morris/D20/DCF@DCF)  
PM cc

Subject  
Senate Bill 74 – Relief of  
“Survivor” and the Estate of  
“Victim” by the Department of  
Children and Families

Good afternoon. In anticipation of the deadline this Friday to produce a CD to the Special Masters containing supporting documentation for use at the hearing, attached is an index to the documents we plan on producing. We cannot email them to you at this time because they are quite voluminous. Please let me know if you would like to add anything. We will provide you with an exact copy of the CD that's produced to the Special Masters.

Olga M. Beato, FRP  
Paralegal to Andrew B. Yaffa  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134  
Tel.: (305) 442-8666  
Fax: (305) 285-1668  
email: [omb@grossmanroth.com](mailto:omb@grossmanroth.com)

(Embedded image moved to file: pic17192.jpg)andy\_logo1  
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(See attached file: Index to Claim Bill Documents.pdf)

**Item #5**

**Morris, Rhonda**

---

**From:** LEVESQUE.GEORGE <LEVESQUE.GEORGE@flsenate.gov>  
**Sent:** Monday, October 27, 2014 4:50 PM  
**To:** Olga M. Beato; Ajanthony@ajalw.com; Andy Yaffa; Neal Roth; Kapusta, Rebecca; Morris, Rhonda  
**Cc:** Thomas, Tom; Jones, Missy; EVERETTE.SHIRLYNE  
**Subject:** S.B. 74- Relief of Survivor and the Estate of Victim-

On behalf of myself and the House Special Master, we will need to cancel the hearing scheduled for this Wednesday. I apologize for the lateness of the notice.

We would like to schedule a conference call to discuss House Rule 5.6 and Senate Rule 4.81 and whether hearings on this claim bill should be held in abeyance under those rules.

If 1:30 this Wednesday, October 29, is still a satisfactory time for everyone, I would suggest we use that previously scheduled time to address this issue. If that time works for all parties, we can use the conference number previously distributed by my office.

Thank you.

George T. Levesque  
General Counsel  
The Florida Senate  
305 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 21288-1100  
(850)487-5237; (850)487-6444 (fax)

Please Note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Your e-mail messages may, therefore, be subject to public disclosure.

**Item #6**

## Bradley A. Silverman

---

**From:** LEVESQUE.GEORGE <LEVESQUE.GEORGE@flsenate.gov>  
**Sent:** Tuesday, October 28, 2014 8:36 PM  
**To:** Neal Roth  
**Cc:** Rhonda Morris; Andy Yaffa; EVERETTE.SHIRLYNE; Jones, Missy; Olga M. Beato; Rebecca Kapusta; Thomas, Tom; Andrew J. Anthony; Bradley Silverman  
**Subject:** Re: S.B. 74- Relief of Survivor and the Estate of Victim-(UPDATED SERVICE LIST)

From the Senate Side, please be prepared to discuss:

1. You have provided the complaints related to "GK" and "JB." Are there any other other claimants not included in the claims presented in Senate Bill 74, or the litigation of "GK" and "JB", who are litigating or pursuing claims that arise out of the same incidences or occurrences which give rise to the settled claims asserted in Senate Bill 74? If so, please specify how many other claimants exist that are pursuing such claims, if known, and whether they are represented, and by whom.
2. For the claims currently being litigated that arise out of the same set of incidences and occurrences, what effect, if any, would the findings of fact have on that litigation if Senate Bill 74 is passed as currently drafted?
3. Why Senate Rule 4.81, when read in conjunction with 768.28, Florida Statutes, do not counsel that the matters presented by Senate Bill 74 should not be held in abeyance until all matters arising out of the same incidence or occurrence have been litigated to final conclusion?

George T. Levesque  
General Counsel  
The Florida Senate  
305 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 21288-1100  
(850)487-5237; (850)487-6444 (fax)

Please Note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Your e-mail messages may, therefore, be subject to public disclosure.

On Oct 28, 2014, at 3:00 PM, Neal Roth <[NAR@grossmanroth.com](mailto:NAR@grossmanroth.com)> wrote:

We have read the cited rules. So as to be prepared can you advise us of the specific issue(s) on the agenda for tomorrow? Also, Alex Villalobos will join us for this call. Thanks.

Sent from my iPhone

> On Oct 28, 2014, at 2:48 PM, "Rhonda Morris" <[Rhonda\\_Morris@dcf.state.fl.us](mailto:Rhonda_Morris@dcf.state.fl.us)> wrote:  
>

> Thank you.  
>  
> The Department will also have Andrew Anthony and/or Bradley Silverman with  
> The Law Office of Anthony & Associates, P.A., calling in as well. I have  
> provided them the call-in information, but for future correspondences,  
> please include them on the service list using the information below. The  
> e-mail address previously provided for Mr. Anthony was incorrect.  
>  
> Andrew Anthony: [ajanthony@ajalaw.com](mailto:ajanthony@ajalaw.com)  
> Bradley Silverman: [bradley.silverman@ajalaw.com](mailto:bradley.silverman@ajalaw.com)  
>  
> The Law Offices of Anthony & Associates, P.A.  
> 250 Catalonia Avenue  
> Suite 505  
> Coral Gables, Florida 33134  
> Tel: (305) 444-8927 ext. 12  
> Fax: (305) 445-9908  
>  
> Thank you,  
> Rhonda Morris  
> Department of Children & Families  
> Assistant General Counsel  
> Risk Management  
> Office: 850-717-4469  
> E-mail: [Rhonda\\_Morris@dcf.state.fl.us](mailto:Rhonda_Morris@dcf.state.fl.us)  
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>



**Item #7**

requirements of a local bill, the bill shall be available for the calendar on local bills notwithstanding Rule 4.3(5).

#### **4.7—Reference to more than one committee; effect**

(1) When a bill receives more than one (1) reference, it shall be considered by each committee separately in the order in which the references are made. However, if any committee to which the bill is referred makes an unfavorable report on said bill, that report shall be filed with the Senate and no further consideration given by other committees except by a two-thirds (2/3) vote of those Senators present while sitting.

(2) If a committee reports a bill favorably with committee substitute or with any amendment which substantially amends the bill, the President may change or correct the reference of the reported bill. Notice shall be given to the Secretary and the introducer of the bill.

#### **4.8—Review and reference of bills affecting appropriations, revenue, retirement, or county or municipal spending**

(1) All bills authorizing or substantially affecting appropriations or tax revenue shall be referred to the appropriate revenue or appropriations committee.

(2) All bills substantially affecting a state-funded or state-administered retirement system shall be referred to the Governmental Oversight and Accountability Committee.

(3) A bill containing a local mandate as described in Article VII, Section 18 of the *State Constitution* shall be referred to the Community Affairs Committee.

(4) A bill that is amended to substantially affect appropriations or tax revenue, a state retirement program, or expenditures or revenues as set forth in Article VII, Section 18 of the *State Constitution* may, before being placed before the Senate for final passage, be referred by the President along with all amendments to the appropriate revenue or appropriations committee.

#### **4.81—Claim bills**

(1) Claim bills are of two (2) types: excess judgment claims filed pursuant to section 768.28(5), *Florida Statutes*, and equitable claims filed without an underlying excess judgment.

(2) All claim bills shall be filed with the Secretary on or before August 1 in order to be considered by the Senate during the next regular session, except that Senators elected to the Senate during a general

election or a special general election may have sixty-two (62) days from the date of that election to file a claim bill. Senators currently serving who are re-elected during a general election are not subject to the immediately preceding provision relating to sixty-two (62) days. A motion to introduce a claim bill notwithstanding the claim bill filing deadline shall be referred to the Rules Committee for a hearing and a determination as to the existence of an emergency reasonably compelling consideration of a claim bill notwithstanding the claim bill filing deadline. A House claim bill which does not have a Senate companion claim bill timely filed under this Rule shall not be considered by the Senate. Any motion to consider a House claim bill which does not have a timely filed Senate companion bill shall be referred to the Rules Committee for a hearing and a determination as to the existence of an emergency reasonably compelling consideration of a claim bill notwithstanding the claim bill filing deadline. The determination by the Rules Committee shall be reported back to the Senate. Upon a determination by the committee that an emergency does exist, the motion may be considered by the Senate and must be adopted by a two-thirds (2/3) vote of those Senators present.

(3) If the President determines that a de novo hearing is necessary to determine liability, proximate cause, and damages, a special master shall conduct such hearing pursuant to reasonable notice. Discovery procedures shall be governed by the *Florida Rules of Civil Procedure* and the *Florida Evidence Code*, as applicable. The special master shall administer an oath to all witnesses, accept relevant documentary and tangible evidence properly offered, record the proceedings, and prepare a final report containing findings of fact, conclusions of law, and recommendations. The report shall be signed by the special master who shall be available, in person, to explain his or her report to the committees and to the Senate.

(4) All claim bills shall be referred by the President to one (1) or more committees for review. On receipt of the special master's report and recommendations, if any, the Secretary shall, upon the President's reference, deliver each claim bill with the report attached to the committee or committees of reference.

(5) Stipulations entered into by the parties are not binding on the special master, the Senate, or its committees.

(6) The hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted; except that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement. This subsection does not apply to a bill which relates to a claim of wrongful incarceration.

(7) All materials provided by litigants and others in connection with claim bills shall be submitted in a digital form prescribed by the Secretary.

#### **4.9—Reference of resolutions**

(1) Substantive resolutions shall be referred by the President to a standing committee.

(2) Resolutions that may be considered without reference to a committee include those addressing:

- (a) Senate organization,
- (b) condolence and commemoration that are of a statewide nonpolitical significance, and
- (c) concurrent resolutions recalling a bill from the Governor's office, adopting Joint Rules of the Legislature, extending a session of the Legislature, or setting an effective date for a bill passed over the Governor's veto.

The resolutions listed in subsection (2) may be considered and read twice on the same day on motion and adopted at time of introduction without reference, except that resolutions of condolence or commemoration that are of a statewide nonpolitical significance may be shown as introduced, read, and adopted by publication in full in the Journal.

(3) A joint resolution setting an effective date for a bill passed over the Governor's veto may be considered on motion and introduced without reference.

#### **4.10—Reference to different committee or removal**

After the President has referred a bill, the Rules Chair may move for reference to a different committee or for removal from any committee after the introducer of the bill has filed a request with the Rules Chair signed by the chair of the affected committee, the Rules Chair, and the President. This motion may be adopted by a two-thirds (2/3) vote of those Senators present.

#### **4.11—Papers of miscellaneous nature**

Papers of a miscellaneous nature addressed to the Senate may, at the discretion of the President, be read, noted in the Journal, or filed with an appropriate committee. When there is a demand to read a paper other than one on which the Senate is called to give a final vote and the same is objected to by any Senator, it shall be determined by a majority vote of those Senators present.

**Item #8**

## Bradley A. Silverman

---

**From:** LEVESQUE.GEORGE <LEVESQUE.GEORGE@flsenate.gov>  
**Sent:** Tuesday, November 25, 2014 9:32 AM  
**To:** Neal Roth; Rhonda Morris; Andy Yaffa; Olga M. Beato; Rebecca Kapusta; Andrew J. Anthony; Bradley Silverman  
**Cc:** EVERETTE.SHIRLYNE; Jones, Missy; Thomas, Tom; FLORES.ANITERE; MEYER.REYNOLD; BROWN.DEBBIE  
**Subject:** SB 74- Relief of Survivor and the Estate of Victim

Counsel:

After further review and in consultation with the Senate President, it has been determined that a Senate Special Master hearing on Senate Bill 74, filed on behalf of Survivor and the Estate of the Victim, should be held in abeyance until all litigation arising out of the same underlying incidences and occurrences has been settled or litigated to conclusion.

Under Senate Rules 4.81, “a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted; except that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement.” Presently, two claimants—Survivor and the Estate of the Victim—have settled their claims with the Department of Children and Families and other actors. Also, two other claimants—GK and JB—are actively engaged in litigation against the agency involving claims arising out of the same set of incidences and occurrences.

Given the current circumstances, it is my opinion that it would be impossible to accomplish this task without adversely impacting presently pending litigation. In the event a special master were to find liability—or not find liability—or necessarily reach any conclusion adverse to a party, the adverse finding of fact or conclusion contained in a claim bill could be used against the party in the pending litigation. The stipulation of the parties to not use such findings and conclusions in pending litigation does not resolve the issue as courts are *required* to take judicial notice of such laws passed by the legislature. *See* 90.201, Fla. Stat. (requiring judicial notice of “[d]ecisional, constitutional, and public statutory law and resolutions of the Florida Legislature . . .”). Even if such findings are not binding on a court, the findings could influence the court or be judicially noticed as official statements of law or admissions by the state. This is precisely why Senate Rule 4.81 requires a claim bill to be held in abeyance until *all* available administrative and judicial remedies have been exhausted.

Under the same Senate Rule, it is the responsibility of a special master to review a claim for relief de novo, including a determination of liability, proximate cause, and damages. This is the case regardless of whether the matter was settled by the government or litigated to conclusion. Under the terms of the settlement between the Estate and the Survivor, the Department of Children and Families has agreed to support the payment of their claim bill without admitting liability. At the same time, the agency is defending against claims arising out of the same set of circumstances in two other active cases in which liability and other essential elements are disputed. Accordingly, the testing of the question of liability and proximate cause would fall squarely on the special master to make such a determination without the cooperation of all parties—a task that would force the special master to step out of the established role of objective decision maker and play the roles of investigator and advocate in order to fully test the theory of the case.

I appreciate the hardship that delay in receiving legislative grace may create for a claimant; however, it is my understanding that the state has already paid \$1.25 million of the settlement with the intention that the

remaining \$3.75 million be pursued through the claim bill process. The prior payment, which far exceeds sovereign immunity limits normally paid under claims against the state under section 768.28, Florida Statutes, was paid under a claim theory of deprivation of civil rights under federal law—a claim that has only been asserted against the individual employees. Additionally, counsel for claimants has indicated that claims against other civil defendants were settled, though the amounts of those settlements have not yet been disclosed. While claimants may not have received all the compensation they are seeking, they have made some recovery.

Finally, it is also my understanding the rights of the adoptive father—one of the accused abusers in pending criminal proceedings—have not been resolved in matters pertaining to the estate of the deceased claimant. Until those matters are resolved, the adoptive father does have a claim to a portion of the deceased's estate.

Under these circumstances, I do not see a compelling justification to depart from long-established legislative procedure requiring the exhaustion of all available administrative and judicial remedies. The Senate Special Master hearing on this matter will be held in abeyance for the current 2015 session until all matters, including the claims of GK and JB and the rights of the adoptive father to the estate, have been settled or litigated to conclusion. I would request that counsel notify me and the House Special Master when those matters are resolved.

Sincerely,

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